THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.17301 of 1998

Dated 19-09-2007

Between:
The Depot Manager, A.P.S.R.T.C., Bus Depot, Jeedimetla depot,
R.R. District.

..... PETITIONER

AND

A.Chander & another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.17301 of 1998

O R D E R:

Aggrieved by the award of the Labour Court-III, Hyderabad in I.D.No.751 of 1995 dated 01-07-1997, in directing reinstatement of the first respondent with continuity of service and with all attendant benefits but without backwages, the present writ petition is filed.

The first respondent was issued charge memo dated 20-04-1993, wherein the following allegations were made against him:

1. "For having failed to issue tickets, despite collecting the requisite fare amount of Rs.50/-, @ Rs.2.50 ps. per head at the boarding point itself, to a batch of 20 passengers who were found travelling without tickets from Suraram to Shobhana theatre, ex-stages 11 to 6/5, which constitutes misconduct in terms of Regulation 28(vi-a) of APSRTC Employees' Conduct Regulations, 1963.
2. For having failed to complete issuing tickets within one fare stage on route Suraram to Secunderabad station which constitutes misconduct in terms of Regulation 26(xxxii) of APSRTC Employees' Conduct Regulations, 1963.
3. For having closed the tray numbers of all the denominations in the S.R. upto stage No.7 without completing the above ticket issues which constitutes misconduct in terms of Regulation 28(xxxii) of APSRTC Employees' Conduct Regulations, 1963."

An enquiry was held and, on the charge being established, the first respondent was imposed the punishment of removal from service. Aggrieved thereby, he invoked the jurisdiction of the Labour Court under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act'). The Labour Court, by order dated 21-01-1997, upheld the validity of the domestic enquiry. Thereafter, while exercising its jurisdiction under Section 11-A of the Act, the Labour Court observed that Ex.M.21, the enquiry report, clearly showed that the witness examined on behalf of the Management had testified in proof of the charges against the first respondent and that it was made out that the first respondent had committed irregularities.

On the quantum of punishment, the Labour Court held that the punishment of removal was harsh, disproportionate and that the petitioner herein had not followed the principles of proportionality correctly while imposing the punishment of removal from service.

Sri K.Madhava Reddy, learned counsel for the petitioner, would contend that, the Labour Court, while exercising jurisdiction under Section 11-A of the Act, cannot interfere with the quantum of punishment imposed by the employer on grounds of misplaced sympathy or as a matter of course. Learned counsel would contend that among the charges held established against the first respondent was his having collected fare from 20 passengers and to have failed to issue tickets which, in effect, amounted to misappropriation of the funds of the Corporation. Learned counsel would submit that while the charge is of his having failed to issue tickets despite collecting the requisite fare and, since this charge is grave and serious in nature, the Labour Court had exceeded its jurisdiction in interfering with the quantum of punishment imposed on the first respondent by the petitioner herein.

Sri V.Narasimha Goud, learned counsel for the first respondent, on the other hand, would submit that the Labour Court has the power under Section 11-A of the Industrial Disputes Act to interfere with the quantum of punishment and this Court, in certiorari proceedings, would not interfere with the discretion exercised by the Labour Court in this regard unless the punishment, as substituted by the Labour Court, is perverse and an error of law apparent on the face of the record. According to the learned counsel, since the Labour Court had the jurisdiction to interfere with the quantum of punishment, no interference is called for.

The Labour Court, under Section 11-A of the Industrial Disputes Act, has the power to re-appreciate the evidence on record and come to a conclusion different from that of the enquiry officer/disciplinary authority. Even if it concurs with the conclusions of the disciplinary authority, and the findings of the enquiry officer, that the charge is held established, even then, the Labour Court has

the power to examine the nature and extent of penalty imposed and to interfere where it finds that the punishment imposed is grossly disproportionate to the charges held established.

In the present case, the validity of the domestic enquiry having been upheld, it would necessarily mean that the enquiry has been held in compliance with the principles of natural justice. The Labour Court has also concurred with the findings of the enquiry officer that the charges levelled against the first respondent were established.

The only question which, therefore, necessitates examination is whether this Court should interfere with the discretion exercised by the Labour Court on the quantum of punishment.

It is well settled that the nature and extent of punishment to be imposed is in the employer's realm and, while the Labour Court has the discretion to interfere with the punishment imposed for proved misconduct of an employee, such exercise of jurisdiction should not be as a matter of course or on grounds of misplaced sympathy. It is only when the charges held established are trivial would interference be called for.

In **Karnataka State Road Transport Corporation v. B.S.Hullikatti**[1], the Supreme Court observed that it is the responsibility of bus conductor to collect correct fares from the passengers and deposit the same in the Corporation, that conductors act in a fiduciary capacity, it would be gross misconduct if knowingly they did not collect any fare or the correct amount of fare and that, in such cases, interference with the punishment of dismissal from service was a case of misplaced sympathy by the Labour Court. In **Regional Manager, Rajastan State Transport Corporation v. Ghanshyam Sharma**[2], the Supreme Court held that the proved acts amounted either to a case of dishonesty or of gross negligence and bus conductors, who by their actions or inactions cause financial loss to the Corporation, are not fit to be retained in service. In **V.Ramana v. A.P.S.R.T.C**[3], the Supreme Court held that Courts/Tribunals should not interfere unless the punishment imposed by the disciplinary authority or the appellate authority shocks the

conscience of the Court/Tribunal.

In the light of the aforesaid judgments of the Supreme Court, it must necessarily be held that the Labour Court had exceeded its jurisdiction in interfering with the quantum of punishment and in substituting the punishment of removal from service with that of reinstatement with continuity of service and attendant benefits without backwages. As noted above, the charges held established include the first respondent's failure to issue tickets to 20 passengers despite having collected fare from them, and for such grave and serious acts of misconduct, it cannot be said that the punishment of removal is not justified. The award of the Labour Court is, therefore, quashed.

After the award of the Labour Court, when the petitioner herein had offered to reinstate the first respondent vide order dated 23-10-1998, the first respondent had submitted his resignation on 26-10-1998 as he was not interested in continuing in employment. He had also requested that his terminal benefits be settled. Learned counsel would submit that, since the first respondent had voluntarily resigned from service and is no longer interested in continuing in the service of the petitioner, no prejudice would be caused to the petitioner in complying with the award of the Labour Court, more so since the first respondent has been denied backwages for the entire period from the date of removal till the award was passed. Learned counsel would submit that the only benefit, which would accrue to the first respondent, is payment of gratuity by treating his service as continuous.

Sri K.Madhava Reddy, learned standing counsel for the petitioner-Corporation, on the other hand, would submit that the order dated 23-10-1998 in directing reinstatement of the first respondent was pursuant to the orders of this Court in W.P.M.P. No. 20631 of 1998 dated 06-07-1998 suspending the award of the Labour Court subject to payment of wages under Section 17-B of the Act. Learned standing counsel would submit that instead of payment of wages last drawn, the Corporation had considered it appropriate to reinstate the petitioner pending disposal of the writ petition and without prejudice

to their rights in the writ petition.

The question whether the petitioner should be given the benefit of continuity of service for the purpose of payment of gratuity is a matter extraneous to the present proceedings. In certiorari proceedings under Article 226 of the Constitution of India, this Court is concerned only with the validity of the award of the Labour Court and not matters extraneous thereto and, since the first respondent's subsequent act of resignation and failure of the petitioner-Corporation to accept the same are mattes subsequent to the award, I see no reason to examine these contentions in the present writ petition. Suffice to hold that quashing the award would not preclude the petitioner from examining the request of the first respondent and taking action thereupon in accordance with law.

The Writ Petition is, accordingly, allowed. However, in the circumstances, without costs.

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19-09-2007

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[1] AIR 2001 SC 930
[2] 2002(1)LLJ 234
[3] AIR 2005 SC 3417